

Person To Contact:

Contact Telephone Number:

8 JUL 1982

Gentlemen:

We have considered your new Form 1024 with the additional information submitted.

It does not appear that your activities have changed any since your initial application. Although there is overall community benefit in some instances, your primary purpose is the operation of a food co-op and coffee shop. You are competing with other grocery stores and restaurants to provide the same services they are offering as for-profit businesses.

In Better Business Bureau v. United States, 326 U.S. 279 (1945), the Court ruled that the presence of a single, nonexempt purpose, if substantial in nature, will destroy the exemption, regardless of the number, or importance, of truly exempt purposes.

Based on the above evidence, we conclude that you are not exempt under section 501(c)(4) of the Internal Revenue Code, and our denial letter of April 14, 1982, remains in effect.

If you wish to appeal our decision, you will need to file, in duplicate, a brief of the facts, law, and argument that clearly sets forth your position. The letter should contain the six items outlined on page two of the attached Publication 892, as well as the required declaration and signature to the document. It is not necessary to file a new Form 1024.

If you have any further questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely yours,

Enclosure:
Publication 892

District Director

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Surname							
Date	11/29	6-29-82	7-2-82				

14 APR 1992

Gentlemen:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(4) of the Internal Revenue Code.

The data presented shows that you are organized as a corporation to manage a food coop and a coffee shop. Of these, it is evident your primary purpose and activity is the management and operation of your food cooperative store. This food cooperative sells merchandise to your members as well as non-members, but your members pay lower prices for their purchases. You encourage people to join your cooperative by advertising that they can save hundreds of dollars by joining your organization.

Section 501(c)(4) of the Internal Revenue Code provides exemption for:

"Civic Leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare..."

Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations provides that:

"An organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterment and social improvements."

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Surname							

Revenue Ruling 73-349 is applicable to your organization. It describes an organization formed for the purpose of purchasing groceries for the membership at the lowest possible prices on a cooperative basis. The organization was denied exemption under section 501(c)(4) because it was formed for the economic benefit and convenience of its members.

Based on the information you furnished, we conclude your organization is also operated primarily for the benefit and convenience of your members. While there is no regulation section specifically prohibiting private benefit in a section 501(c)(4) organization, it is understood that if an organization's activities result primarily in private benefits to individuals, it is not operated exclusively for the promotion of social welfare within the meaning of Code section 501(c)(4).

We have determined, therefore, that you do not qualify for Federal tax exemption under Code section 501(c)(4). You are thus required to file Federal Income tax returns on Form 1120.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-addressed envelope as soon as possible.

If you have any further questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely yours,

Acting District Director

Enclosures:
Publication 892
Form 6018

DEC 08 1981

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

The information presented discloses that you were incorporated [REDACTED] under the laws of the State of [REDACTED].

Your Article of Incorporation state:

The purposes and objects for which the corporation is to be formed are:

To receive and maintain a fund or funds of real or personal property, or both, and subject to the restrictions and limitations hereinafter set forth, to use and apply the whole or any part of the income therefrom and the principal thereof exclusively for charitable, religious, scientific, literary, or educational purposes either directly or by contributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code and its Regulations as they now exist or as they may hereafter be amended, which shall specifically include, but not be limited to the power and authority to

- (a) Promote and encourage all phases of food distribution in and about the [REDACTED] area in the State of [REDACTED];
- (b) Encourage the teaching and instruction of food distribution.
- (c) Encourage the growth and development of skills in the marketing and inventory of food distribution in the area of [REDACTED].

Your by-laws which were adopted [REDACTED] state:

A. To promote and encourage all phases of food distribution in and about the [REDACTED] area.

B. To encourage the teaching and instruction of food distribution.

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Surname		[REDACTED]					
Date		12-7-81					

- C. To encourage the growth and development of skills in the marketing and inventory of food distribution in the area of [REDACTED].
- D. To provide a source of quality food at low prices for the area of this corporation.
- E. To work for the improvement of liveability in the area of this corporation in whatever manner possible and however the members deem advisable.

Part III number 3 of the Application for Recognition of Exemption Form 1023 states in part: "We are trying to bring the community together as a working educational body, by running a business." You further state: "We started setting up and stocking the store from donations and membership dues. We had only grocery items, canned goods, over the counter drugs, spices, a small selection of non-refrigerated produce.

Later as we were able, from the sale of these items, we started with milk, eggs, cheese, ice cream, meat, most all produce, pop and candy. We try to add something new each week." You further state: "We wish to serve everyone with the best quality, least expensive way we can," also: "The Coffee Shop is the last non-profit service provided at [REDACTED]. (Others include day care, grocery store, hispanic services). It represents the completion of a two and one half year effort of volunteers to convert an abandoned inner city school into a neighborhood multi-service center."

The meeting notice attached to Form 1023 stated: "Anyone can shop at the [REDACTED] Store, you do not have to be a member to shop there."

Section 501(c)(3) of the Code provides exemption for:

"Corporations...organized and operated exclusively for religious, charitable...or educational purposes,...no part of the net earnings of which inures to the benefit of any private shareholder or individual..."

Section 1.501(c)(3)-1(b)(1)(i) of the Income Tax Regulations provides that an organization is organized exclusively for one or more exempt purposes only if its Articles of Organization -

- "(A) Limit the purposes of such organization to one or more exempt purposes; and
- (B) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes."

Section 1.501(c)(3)-1(e)(1) of the Income Tax Regulations provides that:

"An organization will be regarded as 'operated exclusively' for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3)..."

Section 1.501(c)(3)-1 of the regulations provides, in part, as follows:

"(a)(1) In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt."

"(a)(2) The term 'exempt purpose or purposes,' as used in this section, means any purpose or purposes specified in section 501(c)(3), as defined and elaborated in paragraph (d) of this section."

"(b)(1)(iv) In no case shall an organization be considered to be organized exclusively for one or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in section 501(c)(3). The fact that the actual operations of such an organization have been exclusively in furtherance of one or more exempt purposes shall not be sufficient to permit the organization to meet the organizational test. Similarly, such an organization will not meet the organizational test as a result of statements of other evidence that the members thereof intend to operate only in furtherance of one or more exempt purposes."

"(d)(2) Charitable defined. The term 'charitable' is used in section 501(c)(3) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of 'charity' as developed by judicial decisions. Such term includes: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency."

"(d)(3)(i) In General. The term 'educational,' as used in section 501(c)(3), relates to-

- (a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or
- (b) The instruction of the public on subjects useful to the individual and beneficial to the community.

"(c)(1) An organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities if the operation of such trade or business is in furtherance of the organizations' exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business, as defined in section 513."

In determining the existence or non-existence of such primary purpose, all the circumstances must be considered, including the size and extent of the trade or business and the size and extent of the activities which are in furtherance of one or more exempt purposes."

Senior Citizen Stores, Inc. v. U.S., 602F 2d 711 (5th cir 1979) states in part: Retail Sales by Senior Citizens are not Charitable/Educational: "The organization is a non-profit corporation formed to provide training, jobs, places of recreation to the elderly and to improve their physical and mental conditions. The organization operates three retail stores, where it sells used clothing, furniture and household appliances to the general public. Proceeds from the business were devoted almost entirely to its perpetuation. No training program was conducted beyond the training of employees for the shops. No health care or housing facilities were provided. The court stated that the retail sales operation was an end in itself rather than a means of accomplishing a charitable goal."

On the basis of the information submitted we conclude that you are not exempt from Federal income tax under Code Section 501(c)(3). Therefore you are required to file Federal income tax returns on Form 1120.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United

[REDACTED]

States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If this determination letter becomes a final determination, we will notify the appropriate State Officials, as required by section 1104(c) of the Code, that based on the information we have, we are unable to recognize you as an organization of the type described in Code section 501(c)(3).

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 8028 in the enclosed self-addressed envelope as soon as possible.

If you have any further questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely yours,

[REDACTED]
District Director

Enclosures:
Publication 892
Form 8018(2)